

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6741 OF 2006

Tata Yazaki Autocomp Ltd. ..Petitioner.

V/s.

The Union of India & Ors. ..Respondents.

Mr.V.Sridharan with Prakash Shah for petitioner.

Mr.P.S.Jetly with Y.R.Mishra for respondents.

**CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.**

DATED : 22ND NOVEMBER, 2006.

P.C. :-

. Heard Mr.Sridharan in support of the petition. Mr.Jetly appears for the respondents. Rule, returnable forthwith.

2. Both the counsel have made their submissions. A reply has been filed to the petition and also the rejoinder which we have perused.

3. Petitioners herein have filed an application for settlement before the Settlement Commission under Chapter V of the Central Excise Act, 1944. Petitioner was faced with a duty demand of Rs.18,83,39,902/- and

in the application for settlement, it was contended by the petitioners that after taking into account the amount of Rs.7,31,00,000/- paid by the D.T.A. unit, the additional duty liability accepted as payable is only Rs.9,22,61,405/-. This is so stated in their application. Thus, the total duty payable on goods manufactured and cleared by the E.O.U. at Rs.18,83,39,902/- is accepted but after adjusting the amount paid by the D.T.A. unit the duty accepted as payable is Rs.9,22,61,405/-.

4. Petitioners are having two units one export oriented unit (E.O.U.) and other unit in the Domestic Tariff Area (D.T.A.). Presently, we are concerned with the duty demand on the E.O.U. unit and the petitioners are in substance asking for adjustment of the amount paid by the D.T.A. unit. The respondents are opposing that plea and they have contended before the Settlement Commission that from the application made by the petitioners, they are in fact admitting the duty liability of Rs.18,83,39,902/-. The Settlement Commission had heard both the parties and in para 9 of its order held that in addition to admitted duty of Rs.9,22,61,405/- which has already been deposited by the applicant, the applicant must deposit a further sum of Rs.7,31,58,191/- plus another Rs.36,80,850/-. The submission of Mr.Sridharan is that if in the eyes of

the Settlement Commission the admitted duty is Rs.9,22,61,405/-, then that amount being already paid the Settlement Commission cannot order payment of any further amount.

5. The submission of Mr.Jetly appearing for the revenue is that from the application of the petitioners, the inference canvassed by them does not flow and in fact the duty liability admitted by the petitioners is Rs.18,83,39,902/- and the amount paid by the D.T.A. unit cannot be adjusted towards that amount.

6. We have heard both the counsel. Although the petitioner has contended that the admitted liability is Rs.9,22,61,405/-, without prejudice to that submissions, the petitioners have offered to give a bank guarantee of a nationalised bank for this amount of Rs.7,68,39,041/-. In our view, looking to the peculiar facts of the case, the suggestion deserves an acceptance. That will protect the interest of the revenue also. Mr.Sridharan has offered to furnish the bank guarantee in two weeks. Accordingly, we modify the impugned order to this limited extent by permitting the petitioners to give a bank guarantee of a nationalised bank for Rs.7.70 crores in two weeks.

7. We are told that the proceeding with the Settlement Commission is kept for hearing on 29th November, 2006, we adjourn it to 13th December, 2006 by which date the bank guarantee will be given by the petitioners.

8. We have made no observation on the submissions made on behalf of the petitioners or respondents. All that we have stated is to record the submissions of both the parties and partly modify the impugned order. Therefore, whatever is stated in this order does not in any way reflect the view of this Court on the submissions of either of the parties.

9. On the request of Mr.Sridharan, we further add that in the event the decision of the Settlement Commission goes against the petitioners, the bank guarantee will not be enforced for a period of three weeks thereafter.

10. Rule is made absolute in above terms with no order as to costs.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)